

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 - - - - -

5 In Re:

Chapter 11

6
7 LEHMAN BROTHERS Case No. 08-13555(JMP)
HOLDINGS, INC. et al., (Jointly Administered)

8
9 Debtors.
10 - - - - -

11 HIGHLY CONFIDENTIAL
12 DEPOSITION OF PAOLO TONUCCI
13 Friday 14 August 2009
14 At: 7:00 am
15 Taken at:
16 Jones Day
21 Tudor Street
17 London
United Kingdom

18
19 Reported by: AILSA WILLIAMS
Certified LiveNote Reporter
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HIGHLY CONFIDENTIAL - PAOLO TONUCCI

A P P E A R A N C E S

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Also Present:

PHILIP E. KRUSE, Alvarez & Marsal

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2 PAOLO TONUCCI

3 Having been sworn,

4 Testified as follows

5 DIRECT EXAMINATION BY MR. TAMBE:

6 MR. TAMBE : Morning, Mr. Tonucci. We
7 met this morning. My name is Jay Tambe with Jones
8 Day, representing the Lehman Brothers Holdings
9 Estate. I will have counsel introduce themselves
10 to you and then we will get started.

11 MS CRAWFORD: Bridget Crawford from
12 Jones Day.

13 MR. MAGUIRE: Bill Maguire, Hughes,
14 Hubbard & Reed for the Trustee.

15 MR. BUNTING: Matthew Bunting, Quinn,
16 Emanuel, Urquhart, Oliver & Hedges for the
17 Creditors Committee and on the phone Erica
18 Taggart, also Quinn, Emanuel, Urquhart, Oliver &
19 Hedges.

20 MR. KRUSE: Phil Kruse with Alvarez &
21 Marsal on behalf of the LBHI Estate.

22 MR. LUCHT: Christopher Lucht, Simpson
23 Thacher & Bartlett, on behalf of the witness in
24 his individual capacity.

25 MR. HUME: Hamish Hume from Boies,

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2 Schiller & Flexner representing Barclays.

3 MR. TAMBE: Erica, can you hear us?

4 MS TAGGART: Yes, thank you.

5 MR. TAMBE: Morning, Mr. Tonucci. By

6 whom are you currently employed?

7 A. Barclays.

8 Q. In what capacity?

9 A. I work in the treasury area.

10 Q. What is your position?

11 A. Head of group balance sheet.

12 Q. And is that head of group balance sheet

13 for global operations?

14 A. That is right, for global operations.

15 Q. How long have you held that position?

16 A. Since February of this year.

17 Q. How long have you been employed by

18 Barclays?

19 A. Since September, 26 September 2008.

20 Q. What was your position at Barclays when

21 you first joined Barclays in September 2008?

22 A. US treasurer for Barclays Capital.

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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2 [REDACTED] FROM A [REDACTED] OF [REDACTED]. [REDACTED]

3 [REDACTED] [REDACTED] IT AS [REDACTED] [REDACTED]

4 [REDACTED]

8 A. The difference between the market value
9 and the cash received is known as the haircut in
10 a secured funding arrangement, the market value of
11 the securities I should say.

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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Q. Let me rephrase. You understood the
5 billion dollars all in economic loss versus our
marks to be a reference to a discount off the
marks, correct?

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2 A. Yes.

3 Q. The deal that was ultimately done and
4 closed on September 22, that too included
5 a discount off of Lehman's marks, correct?

6 A. That is correct.

7 Q. Okay, and the amount of that discount
8 off of Lehman's marks was about \$5 billion, is
9 that right?

10 MR. HUME: Objection, lacks foundation.

11 A. It is uncertain, because obviously there
12 were a lot of valuation movements and so
13 I couldn't say with certainty, but certainly what
14 I can say is versus the valuations that I recall
15 seeing from our analysis it was about that number.

16 Q. About \$5 billion?

17 A. About \$5 billion.

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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2 [REDACTED]

3 [REDACTED]

4 Q. How did Barclays get the
5 5 billion-dollar discount?

6 A. Right. I think what was contemplated in
7 the negotiation, and what was executed in terms of
8 the settlement probably differed slightly, you
9 know, and involved over the week the settlement of
10 the transaction, meaning the actual transfer of
11 securities and cash was through the repo
12 agreements, and essentially the termination of
13 those repo agreements.

14 Q. Was the discount given to Barclays by
15 defaulting on the repo?

16 MR. HUME: Objection. You are asking
17 the witness very general questions about
18 a complicated transaction without walking him
19 through any of the details of that transaction. I
20 think the line of questioning lacks foundation.

21 MR. TAMBE: You have an objection to
22 form, right, Hamish? So noted. Answer the
23 question, please.

24 MR. HUME: I think the line of
25 questioning is calling for speculation and lacks

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2 foundation.

3 MR. TAMBE: Do you remember my question?

4 Probably not. Do you want it read back?

5 A. Yes, please.

6 (Read back)

7 A. Yes, I would say that was the way in
8 which the transaction was settled, so that is
9 fair.

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] objection, what did [REDACTED]?

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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Q. Tell me briefly what the changes were,
if any, in the size of the Fed repo from Monday to
Tuesday to later in the week?

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2 A. I can't recall the exact details. I
3 recall that the Barclays repo on the -- again, I
4 am not certain about this but the Barclays repo on
5 the 16th, I believe, was for \$5 billion. On the
6 17th I believe it was for \$8 billion and then on
7 the Thursday there was obviously a much bigger
8 transaction and so that changed the Fed repo,
9 which became zero.

10 Q. Let's talk about that bigger transaction
11 on Thursday, okay. Describe for me how the Fed
12 repo went to zero and what happened with the
13 Barclays repo on Thursday?

14 A. It is difficult for me to talk about the
15 mechanics because I am not that close to the
16 operational mechanics of the repo being unwound,
17 but my understanding was that the repo unwound on
18 the Thursday morning, which would be typical in
19 a tri-party repo, that an overnight repo would
20 unwind, you would return the collateral and the
21 cash and the transactions would then settle with
22 that collateral that was released, and at the end
23 of the day a new financing transaction would be
24 settled.

25 In this instance there was complexity because

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2 JP Morgan was the tri-party agent for Lehman and had been
3 the tri-party agent in the transaction with the Fed. BONY
4 was the tri-party agent for Barclays and so there was a need
5 to transfer collateral from JP Morgan to Bank of New York
6 tri-party system, and I am not sure about the mechanics
7 involved in that transfer but it was clearly a more
8 complicated transaction than if the financing had just been
9 through the JP Morgan tri-party system.

10 Q. Is it your understanding that on
11 Thursday, in this bigger transaction on Thursday,
12 Barclays effectively replaced the Fed and the Fed
13 funding transaction?

14 A. I was not involved in the discussions
15 with Barclays or with the Fed on the removal or
16 replacement of the Fed in that transaction, so I
17 can't really talk to the specifics, but my
18 understanding was that the Fed transaction was
19 going to mature on the Thursday and they were not
20 really providing any financing subsequently.

21 Q. Wednesday night into Thursday, do you
22 recall the size of the Fed funding being
23 approximately \$45 billion?

24 A. Yes, that sounds about right.

25 Q. And the Fed was holding approximately

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2 \$50 billion in collateral against that financing?

3 A. That sounds right.

4 Q. And the big transaction that you
5 described on Thursday effectively had Barclays
6 coming in and putting in \$45 billion to pay off
7 the Fed repo, correct?

8 A. I understood that they were going to be
9 putting in 45, that it was going to be
10 a 45 billion-dollar transaction, yes.

11 Q. And all the collateral that was being
12 held by the Fed was then going to be transferred
13 to Barclays, correct?

14 MR. HUME: Objection, asked and
15 answered. He has already explained.

16 A. To be honest, I was not close enough to
17 the actual transaction that was being booked to
18 know exactly where all the collateral was going to
19 end up, nor was I close enough to any agreements
20 with Barclays or with the Fed as to where all of
21 the collateral was going to end up.

22 Q. So effectively on Thursday the Fed
23 funding goes down to zero, correct?

24 A. That is correct.

25 Q. And they exit the financing picture at

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2 that point?

3 A. That is correct.

4 Q. And what you have left is the Barclays
5 repo, correct?

6 A. That is correct.

7 Q. Describe for me what happens with the
8 Barclays repo over the next few business dates?
9 We are now into Thursday on to Friday the 19th.

10 MR. HUME: Again, objection to the form
11 of the question and the lack of foundation.

12 A. That transaction happened on Thursday.
13 That was essentially the last of that transaction
14 in the way that I think about it. It was executed
15 on Thursday night and settled Thursday night into
16 Friday morning and that was the end of that
17 transaction. After that it was just a matter of
18 that transaction terminating and the collateral
19 being rebooked as a purchase by Barclays and as
20 a sale by Lehman.

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 Q. The repo transaction, fourth

25 [REDACTED] generally

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Q. And do you recall there being an effort
on September 19 to find additional collateral for

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2 Barclays?

3 A. I do.

4 Q. What can you tell us about the efforts
5 to find additional collateral for Barclays?

6 A. That we were asked on the morning of the
7 19th to find if there was additional collateral to
8 include in the transaction.

9 Q. Asked by whom?

10 A. I believe I was asked by Ian Lowitt.

11 Q. Did Ian Lowitt tell you why he was
12 asking you to find additional collateral?

13 A. He said that it was necessary for the
14 transaction to close and he reiterated that
15 through the day.

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Q. You have a second item: "Their opening
12 balance sheet should also include 1.9 billion of
13 box assets". Correct?

14 A. Correct.

15 Q. What is that a reference to?

16 A. The unencumbered collateral.

17 Q. Schedule B?

18 A. Which became Schedule B.

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

2 [REDACTED]
3 [REDACTED] detailed
4 [REDACTED] that he
5 [REDACTED] the
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] the C mail chain
13 [REDACTED]
14 [REDACTED]
15 [REDACTED] the bottom
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 Q. The third item reads: "Not clear on the
24 amount of blocked discount or how we make it
25 happen." Do you see that?

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2 A. Yes.

3 Q. And you understand that to be
4 a reference to the 5 billion-dollar discount that
5 we talked about earlier?

6 MR. HUME: Objection, lacks foundation.

7 A. I understand it to be a reference to the
8 discount on purchase, so I would have linked it to
9 that \$5 billion.

10 Q. Then the next sentence reads:

11 "Defaulting on repo could be the best as
12 discounts could be taken from the haircut."

13 Do you see that?

14 A. Yes.

15 Q. Do you remember discussing with anyone
16 at Lehman defaulting on the repo as a way of
17 providing the discount to Barclays?

18 A. Yes.

19 Q. With whom did you discuss that?

20 A. I think it was with Ian and with Gerry,
21 perhaps Martin Kelly as well.

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]?

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 Q. And your understanding was that

24 a default on the repo really converted what was a

25 two-leg transaction; the repurchase leg would go

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2 away and there would effectively be a sale of the
3 asset?

4 MR. HUME: Objection.

5 A. That is correct. It would become
6 a sale.

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

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25 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

~~_____~~ ~~_____~~ in addition _____

~~_____~~

Q. I have talked about the components at that that you have in your e-mail, where you up the opening balance sheet, right, you have repo component and then you have 1.9 billion what we have talked about, became Schedule B, then you had another billion dollars of the receivables?

A. That is correct.

Q. And the 1.9 and the 1 is about \$2.9 billion, right?

A. That is correct.

Q. And that was additional value over and above the repo, correct?

MR. HUME: Objection.

A. Additional assets over and above the

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2 repo assets that were transferred on the Thursday
3 night.

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]